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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,411	10/12/2001	Amy B. Reed	NPI-30 (14845)	1102
22827	7590	04/20/2006	EXAMINER	
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			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/976,411

Applicant(s)

REED ET AL.

Examiner

Hai Vo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1013</u> . | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1771

1. The art rejections over Weber et al (US 5,191,734) in the 12/08/2005 Examiner's Answer are considered moot in view of the cancellation of claims 21-41.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 42-44, 46-60, and 62-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber et al (US 5,191,734) in view of the paper "Hystretch® Elastomeric Emulsions", Noveon, Inc., 2001-2006, 1 page. Weber teaches a biodegradable latex web material as a surgical gown comprising a fibrous web being saturated with a latex binder having a glass transition temperature from -50°C to 20°C (abstract). The latex composition is a natural, synthetic or a combination of natural and synthetic polymers as shown in table II. The latex composition comprises a polyacrylate, nitrile rubber, natural rubber or a combination thereof (column 4, lines 31-34, and table II). The latex binder is about 16 to 80 dry parts per 100 parts fibers by weight (column 5, line 29) within the claimed range. Although the glass transition temperature ( $T_g$ ) of Hycar® 1570X55 is not expressly recited in Weber '734, US Patent no. 5,370,132 to Weber et al indicates that Hycar® 1570X55 has a  $T_g$  of -48°C (see table IV of Weber '132). Similarly, Weber '132 evidences that natural rubber Hartex® 104 having a  $T_g$  of -70°C. Weber does not specifically disclose the use of a

Art Unit: 1771

polyacrylate latex having a glass transition temperature of  $-20^{\circ}\text{C}$  or lower. The paper "Hystretch ® Elastomeric Emulsions", Noveon, Inc. 2001-2006 shows that as an anionic polyacrylate latex, hystretch emulsion V-43 that has a glass transition temperature of  $-43^{\circ}\text{C}$  is useful as a nonwoven and paper saturant to provide excellent softness and elasticity. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the hystretch V-43 as a paper saturant of the Weber product because the hystretch V-43 has a glass transition temperature within the range as required by the Weber reference and provides excellent softness and elasticity to the web material.

Weber does not specifically disclose the biodegradable latex web material having a Gurley Hill porosity and exhibiting a % BFE as recited in the claims. However, it appears that the biodegradable latex web material of Weber as modified by the paper "Hystretch ® Elastomeric Emulsions" is made of the same materials with the similar composition as the medical packaging substrate of the present invention; i.e., paper based web impregnated with a binder present in an amount within the claimed range. The binder has a glass transition temperature within the claimed range. Hence, it is the examiner's position that the Gurley Hill porosity and the percent bacterial filtration efficiency (BFE) would be inherently present. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties.

**Double Patenting**

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 42-50, 56-64, 67 and 68 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,887,537. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-20 of the '537 patent disclose a medical package comprising fibrous web base being saturated with a composition comprising a blend of an acrylic latex polymer and a heat sealable polymer. Claim 10 of the '537 patent discloses the saturant present in an amount of at least 25% by weight within the claimed range. Claim 20 of the '537 patent discloses the fibrous web having a Gurley porosity of less than about

120 seconds per 100 cc within the claimed range. It appears that the fibrous web of substrate U.S. Patent No. 6,887,537 is suitable for use in medical packaging substrate and made from a material having a composition similar to the composition of the material used to form the medical packaging substrate of the present invention. Therefore, it is the examiner's position that the percent bacterial filtration efficiency would be inherently present. It seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete. If the chemical composition of the claimed article of manufacture recited in the claims is the same as the identical structure of the prior art, it is immaterial that the applicant recognized different advantages flowing therefrom than did the prior art. This is in line with *Titanium Metals Corp. of America v. Banner* (CAFC 1985) 227 USPQ 775.

6. Claims 51-55, 65 and 66 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. U.S. Patent No. 6,887,537 in view of Weber et al (US 5,191,734). The '537 patent does not specifically disclose the saturant comprising an additional latex polymer emulsion. Weber discloses a biodegradable latex web material as a surgical gown comprising a fibrous web being saturated with a latex composition which is a combination of polyacrylate, nitrile rubber, natural rubber (column 4, lines 31-34, and table II). Although the glass transition temperature ( $T_g$ ) of Hycar ®1570X55 is not expressly recited in Weber '734, US Patent no. 5,370,132 to Weber et al indicates that Hycar ® 1570X55 has a  $T_g$  of  $-48^\circ\text{C}$  (see table IV of

Art Unit: 1771

Weber '132). Similarly, Weber '132 evidences that natural rubber Hartex® 104 having a  $T_g$  of  $-70^{\circ}\text{C}$ . Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the saturant being a blend of polyacrylate, nitrile rubber, and natural rubber as taught by Weber '734 motivated by the desire to provide excellent tensile strength to the fibrous web base.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kronzer (US 5,895,557) discloses a latex-saturated paper comprising a saturant having a glass transition temperature of from about  $-40^{\circ}\text{C}$  to about  $25^{\circ}\text{C}$ .

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on Monday through Thursday, from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Hai V.*

HV

**HAI VO  
PRIMARY EXAMINER**